

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

JPA NO. 111 CO., LTD., and
JPA NO. 49 CO., LTD.,

Debtors¹.

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Chapter 11

Case No. 21–12075 (DSJ)

(Jointly Administered)

**APPELLANT FITZWALTER CAPITAL PARTNERS (FINANCIAL TRADING)
LIMITED’S STATEMENT OF ISSUES TO BE PRESENTED AND
DESIGNATION OF RECORD ON APPEAL**

¹ The Debtors in these Chapter 11 cases are: JPA No. 111 Co., Ltd. and JPA No. 49 Co., Ltd. The Debtors’ corporate address is: Kasumigaseki Common Gate West Tower, 3–2–1 Kasumigaseki, Chiyoda–Ku, Tokyo 100–0013.

Appellant, FitzWalter Capital Partners (Financial Trading) Limited (“**FWCP**”), pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, hereby submits (i) its statement of the issues to be presented on appeal from the *Order*, dated February 1, 2022 (Dkt. No. 97); and (ii) designation of items to be included in the record on appeal.

I. STATEMENT OF ISSUES ON APPEAL

FWCP submits the following issues on appeal:

1. Whether the Bankruptcy Court erred in holding that JPA No. 111 Co., Ltd. and JPA No. 49 Co., Ltd. (“the **Debtors**”) satisfy the requirements of section 109 of the Bankruptcy Code based on the transfer of retainer amounts from the Debtors’ parent company, JP Lease Products & Services Co. Ltd. (“**JPL**”), directly into accounts established by the Debtors’ then–proposed bankruptcy counsel.

2. Whether the Bankruptcy Court erred by holding that the Debtors’ as–filed schedules of assets and liabilities (the “**Schedules**”) did not constitute a judicial or evidentiary admission that the Debtors did not have property located in the United States as required by section 109 of the Bankruptcy Code.

3. Whether the Bankruptcy Court erred in holding that the Debtors filed their bankruptcy petitions in good faith because they are pursuing a sale under 11 U.S.C. § 363 that Debtors claim will maximize recoveries, where that sale is predicated on the improper sale of property that is not property of the Debtors’ estates.

4. Whether the Bankruptcy Court erred in holding that the Debtors filed their bankruptcy petitions in good faith without considering that JPL likely had breached contractual obligations and thus would improperly benefit from the Debtors filing bankruptcy petitions.

5. Whether the Bankruptcy Court erred in holding that the Debtors filed their bankruptcy petitions in good faith when every secured creditor and JPL were parties to an

intercreditor and subordination agreement (the “**Proceeds Agreement**”) that already provided a comprehensive mechanism to dispose of and allocate all assets of the Debtors and other collateral securing obligations owed by the Debtors.

6. Whether the Bankruptcy Court erred in holding that abstention under 11 U.S.C. § 305 was not warranted even though the Proceeds Agreement expressly provided a comprehensive mechanism to dispose of and allocate all assets of the Debtors and other collateral securing obligations owed by the Debtors, and required all matters relating to disposition and allocation of the Debtors’ assets and other collateral securing Debtors’ allegations be resolved in the courts of England and Wales.

FWCP reserves its rights to supplement or amend this Statement of Issues.

II. DESIGNATION OF RECORD ON APPEAL

FWCP designates the following documents to be included in the Record on Appeal (including any exhibit, annex, or addendum thereto).

Item No.	Filing Date	Docket No.	Pleading/Document/Exhibit
1	12/17/2021	Case No. 21–12075 (DSJ) [Dkt. No. 1]	Chapter 11 Voluntary Petition for Debtor JPA No. 111 Co., Ltd.
2	12/17/2021	Case No. 21–12076 (DSJ) [Dkt. No. 1]	Chapter 11 Voluntary Petition for Debtor JPA No. 49 Co., Ltd.
3	12/17/2021	Case No. 21–12075 (DSJ) [Dkt. No. 3]	Declaration of Teiji Ishikawa Pursuant to Local Bankruptcy Rule 1007–2 and In Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings
4	12/17/2021	Case No. 21–12075 (DSJ) [Dkt. No. 5]	Debtors’ Motion for Entry of an Order (I) Enforcing the Protections of Sections 105(a), 362, 365, 525, and 541 of the Bankruptcy Code, Restating Automatic Stay and <i>Ipso Facto</i> Provisions; and (II) Granting Related Relief
5	12/20/2021	Case No. 21–12075 (DSJ) [Dkt. No. 12]	Objection to Debtors’ Motion for Entry of an Order (I) Enforcing the Protections of Sections 105(a), 362, 365, 525, and 541 of the Bankruptcy Code, Restating Automatic Stay and <i>Ipso Facto</i>

			Provisions; and (II) Granting Related Relief
6	12/20/2021	Case No. 21–12075 (DSJ) [Dkt. No. 15]	Order Signed on 12/20/2021 (I) Enforcing the Protections of Sections 105(a), 362, 365, 525, and 541 of the Bankruptcy Code, Restating Automatic Stay and Ipso Facto Provisions; and (II) Granting Related Relief
7	12/22/2021	Case No. 21–12075 (DSJ) [Dkt. No. 18]	Transcript regarding Hearing Held on 12/20/2021 At 10:30 AM RE: First Day Motions.
8	12/31/2021	Case No. 21–12075 (DSJ) [Dkt. No. 18]	Schedules of Assets and Liabilities for Debtor JPA No. 111 Co., Ltd.
9	12/31/2021	Case No. 21–12075 (DSJ) [Dkt. No. 18]	Statement of Financial Affairs for Debtor JPA No. 111 Co., Ltd.
10	12/31/2021	Case No. 21–12076 (DSJ) [Dkt. No. 6]	Schedules of Assets and Liabilities for Debtor JPA No. 49 Co., Ltd.
11	12/31/2021	Case No. 21–12076 (DSJ) [Dkt. No. 7]	Statement of Financial Affairs for Debtor JPA No. 49 Co., Ltd.
12	12/31/2021	Case No. 21–12075 (DSJ) [Dkt. No. 21]	Debtors’ Application for Entry of Orders: (I)(A) Approving Bidding Procedures Relating to the Sale of Substantially All of the Debtors’ Assets; (B) Establishing Stalking Horse Bidders and Bid Protections; (C) Approving Procedures of the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (D) Authorizing Enforcement Actions; (E) Scheduling an Auction and a Sale Hearing; and (F) Approving the Form and Manner of Notice Thereof; and (II)(A) Approving the Sale of the Purchased Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; and (B) Granting Related Relief
13	1/02/2022	Case No. 21–12075 (DSJ) [Dkt. No. 22]	FWCP’s Motion to Dismiss or Abstain From Hearing These Chapter 11 Cases
14	1/02/2022	Case No. 21–12075 (DSJ) [Dkt. No. 23]	Declaration of Andrew Gray In Support of FWCP’s Motion to Dismiss or Abstain From Hearing These Chapter 11 Cases, and All Exhibits Attached Thereto
15	1/10/2022	Case No. 21–12075 (DSJ) [Dkt. No. 44]	Declaration of Heinrich Loechteken In Support of Debtors’ Application for Entry of Orders: (I)(A) Approving Bidding Procedures Relating to the Sale of Substantially All of the Debtors’

			Assets; (B) Establishing Stalking Horse Bidders and Bid Protections; (C) Approving Procedures of the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (D) Authorizing Enforcement Actions; (E) Scheduling An Auction and A Sale Hearing; and (F) Approving the Form and Manner of Notice thereof; and (II)(A) Approving the Sale of the Purchased Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; and (B) Granting Related Relief
16	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 49]	FWCP’s Letter Regarding Discovery Conference
17	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 50]	Debtors’ Letter Regarding Discovery Conference
18	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 51]	Statement of Sumitomo Mitsui Trust Bank, Limited, Regarding the Bidding Procedures Motion and the Dismissal Motion
19	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 53]	Debtors’ Objection to the Motion of FitzWalter Capital Partners (Financial Trading) Limited to Dismiss or Abstain from Hearing these Chapter 11 Cases, and All Exhibits Attached Thereto
20	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 54]	Joinder of Mizuho Leasing Co., Ltd. to Debtors’ Objection to the Motion of FitzWalter Capital Partners (Financial Trading) Limited to Dismiss or Abstain from Hearing these Chapter 11 Cases
21	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 55]	Response of JP Lease Product & Services Co. (A) Objecting to Motion of FitzWalter Capital Partners (Financial Trading) Limited to Dismiss or Abstain from Hearing these Chapter 11 Cases
22	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 56]	FWCP’s Preliminary Objection to Debtors’ Application for Entry of Orders: (I)(A) Approving Bidding Procedures Relating to the Sale of Substantially All of the Debtors’ Assets; (B) Establishing Stalking Horse Bidders and Bid Protections; (C) Approving Procedures of the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (D) Authorizing Enforcement Actions; (E) Scheduling An Auction and A Sale Hearing; and (F) Approving the Form and Manner of Notice Thereof; and (II)(A) Approving the Sale of the Purchased Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; and

			(B) Granting Related Relief
23	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 57]	Declaration of Benjamin Finestone in Support of FWCP’s Preliminary Objection to Debtors’ Application for Entry of Orders: (I)(A) Approving Bidding Procedures Relating to the Sale of Substantially All of the Debtors’ Assets; (B) Establishing Stalking Horse Bidders and Bid Protections; (C) Approving Procedures of the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (D) Authorizing Enforcement Actions; (E) Scheduling An Auction and A Sale Hearing; and (F) Approving the Form and Manner of Notice Thereof; and (II)(A) Approving the Sale of the Purchased Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; and (B) Granting Related Relief, and All Exhibits Attached Thereto
24	1/13/2022	Case No. 21–12075 (DSJ) [Dkt. No. 58]	Notice of Filing of Exhibits to the Debtors’ Application for Entry of Orders: (I)(A) Approving Bidding Procedures Relating to the Sale of Substantially all of the Debtors Assets; (B) Establishing Stalking Horse Bidders and Bid Protections; (C) Approving Procedures of the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (D) Authorizing Enforcement Actions; (E) Scheduling an Auction and a Sale Hearing; and (F) Approving the Form and Manner of Notice Thereof; and (II)(A) Approving the Sale of the Purchased Assets Free and Clear of all Liens, Claims, Interests and Encumbrances; and (B) Granting Related Relief, and All Exhibits Attached Thereto
25	1/17/2022	Case No. 21–12075 (DSJ) [Dkt. No. 61]	FWCP’s Letter Regarding January 14, 2022 Discovery Conference
26	1/17/2022	Case No. 21–12075 (DSJ) [Dkt. No. 62]	Debtors’ Letter Regarding January 14, 2022 Discovery Conference
27	1/18/2022	Case No. 21–12075 (DSJ) [Dkt. No. 67]	FWCP’s Reply in Support of Motion to Dismiss or Abstain From Hearing These Chapter 11 Cases
28	1/18/2022	Case No. 21–12075 (DSJ) [Dkt. No. 68]	Debtors’ Reply in Support of Application for Entry of Orders: (I)(A) Approving Bidding Procedures Relating to the Sale of Substantially

			All of the Debtors' Assets; (B) Establishing Stalking Horse Bidders and Bid Protections; (C) Approving Procedures of the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (D) Authorizing Enforcement Actions; (E) Scheduling An Auction and A Sale Hearing; and (F) Approving the Form and Manner of Notice thereof; and (II)(A) Approving the Sale of the Purchased Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; and (B) Granting Related Relief
29	1/20/2022	Case No. 21–12075 (DSJ) [Dkt. No. 73]	Transcript of Discovery Conference Held on January 14, 2022
30	1/20/2022	Case No. 21–12075 (DSJ) [Dkt. No. 74]	Transcript of Discovery Conference Held on January 18, 2022
31	1/21/2022	Case No. 21–12075 (DSJ) [Dkt. No. 78]	Supplemental Declaration of Heinrich Loechteken In Support of Debtors'; (I) Objection to the Motion of FitzWalter Capital Partners (Financial Trading) Limited to Dismiss or Abstain from Hearing these Chapter 11 Cases and (II) Application for Entry of Orders, <i>Inter Alia</i> , Approving Bidding Procedures Relating to the Sale of Substantially All of the Debtors' Assets, and All Exhibits Attached Thereto
32	1/22/2022	Case No. 21–12075 (DSJ) [Dkt. No. 79]	Declaration of Akhil Shah In Support of FWCP's Motion to Dismiss and Preliminary Objection to Debtors Application for Entry of Orders, and All Exhibits Attached Thereto
33	1/23/2022	Case No. 21–12075 (DSJ) [Dkt. No. 80]	Supplemental Declaration of Andrew Gray in Support of Creditor FitzWalter Capital Partners Motion To Dismiss or Abstain From Hearing These Chapter 11 Cases; And Objection To Debtors Application for Entry of Orders, <i>Inter Alia</i> , Approving Bidding Procedures, and All Exhibits Attached Thereto
34	1/26/2022	Case No. 21–12075 (DSJ) [Dkt. No. 88]	January 26, 2022 Exhibit List, and All Exhibits Listed Thereon, Each as Admitted on the Record at the January 26, 2022 Hearing
35	1/28/2022	Case No. 21–12075 (DSJ) [Dkt. No. 90]	Debtors' Statement Responding to this Court's Inquiries Regarding Debtors' Motion to Approve Bidding Procedures
36	1/31/2022	Case No. 21–12075 (DSJ)	FWCP's Response to Debtors' Statement Responding to this Court's Inquiries Regarding

		[Dkt. No. 91]	Debtors' Motion to Approve Bidding Procedures
37	1/31/2022	Case No. 21– 12075 (DSJ) [Dkt. No. 94]	Transcript of Hearing Held on January 26, 2022 Regarding Motion Filed By FitzWalter Capital Partners (Financial Trading) To Dismiss Or Abstain From Hearing These Chapter 11 Cases.; Application Filed By The Debtor For Entry Of Orders: (I)(A) Approving Bidding Procedures Relating To The Sale Of Substantially All Of The Debtors Assets; (B) Establishing Stalking Horse Bidders And Bid Protections; (C) Approving Procedures Of The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases; (D) Authorizing Enforcement Actions; (E) Scheduling An Auction And A Sale Hearing; And (F) Approving The Form And Manner Of Notice Thereof; And (II)(A) Approving The Sale Of The Purchased Assets Free And Clear Of All Liens, Claims, Interests, And Encumbrances; And (B) Granting Related Relief
38	2/01/2022	Case No. 21– 12075 (DSJ) [Dkt. No. 97]	Memorandum of Decision and Order Signed on 2/1/2022 Resolving Motion to Dismiss
39		N/A	Cover Email and Designations of Deposition Testimony of Heinrich Loechteken Admitted into Evidence at the January 26, 2022 Hearing in Lieu of Cross Examination.
40	2/15/2022	Case No. 21– 12075 (DSJ) [Dkt. No. 115]	FitzWalter Capital Partners (Financial Trading) Limited's Notice of Appeal

Dated: February 28, 2022

Respectfully submitted,

/s/ Benjamin I. Finestone

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